

IN THE SUPREME COURT OF THE STATE OF DELAWARE

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|-------------------------|---|---------------------------------|
| ROBERT W. JACKSON, III, | § | |
| | § | No. 264, 2008 |
| Petitioner Below, | § | |
| Appellant, | § | Court Below–Superior Court |
| | § | of the State of Delaware in and |
| v. | § | for New Castle County |
| | § | |
| COMMISSIONER CARL C. | § | C.A. No. 07M-09-141 |
| DANBERG and DEPARTMENT | § | |
| OF CORRECTION, | § | |
| | § | |
| Respondents Below, | § | |
| Appellees. | § | |

Submitted: October 22, 2008
Decided: October 28, 2008

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

ORDER

This 28th day of October, after considering the briefs and arguments of the parties, this Court concludes that the Superior Court correctly interpreted 11 *Del. C.* §4322 (d) as exempting the Department of Correction’s policies and procedures from the public review and comment provisions of the Administrative Procedures Act. Accordingly, we affirm on the basis of the Superior Court’s April 25, 2008 Memorandum Opinion.

On appeal, the parties argued for the first time that the Department of Correction waived its statutory exemption by publishing certain information on its

website. This issue was not addressed in the trial court because the Department of Correction did not notify opposing counsel or the Superior Court of the relevant facts.¹ This Court will not consider issues not fairly presented to the trial court, unless required to do so in the interests of justice.² We decline to invoke the “interests of justice” exception.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court be, and the same hereby is, AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

¹The Department of Correction points out that, at the end of oral argument on its Motion to Dismiss, it advised the trial court that, “the Commissioner has started putting some regulations on the Department of Correction website.” Neither the timing nor the content of that statement adequately alerted opposing counsel to the waiver issue presented in this Court.

²Supr. Ct. R. 8.